

V I R G I N I A

IN THE GENERAL DISTRICT COURT OF FAIRFAX COUNTY

- - - - - - - - - - -X
:
COMMONWEALTH OF VIRGINIA :
:
-vs- : CASE NO.: GC18006702-00
:
JESSE CURTIS MORTON, :
a/k/a YOUNUS ABDULLAH MUHAMMAD, :
:
Defendant. :
:
- - - - - - - - - - -X

General District Courtroom 1A
Fairfax County Courthouse
Fairfax, Virginia

Tuesday, April 3, 2018

The above-entitled matter came on to be heard
before THE HONORABLE WILLIAM J. MINOR, JR., Judge, in and
for the General District Court of Fairfax County, in the
Courthouse, Fairfax, Virginia, beginning at 2:56 o'clock
p.m.

APPEARANCES:

On Behalf of the Commonwealth:

BRIDGET A. CORRIDON, ESQUIRE
Assistant Commonwealth's Attorney

On Behalf of the Defendant:

JAMES W. HUNDLEY, ESQUIRE

* * * * *

C O N T E N T S

| WITNESS | DIRECT | CROSS | REDIRECT | RECROSS |
|----------------------|--------|-------|----------|---------|
| JOSE TORRES | 5 | 8 | -- | -- |
| OFF. SCOTT D. SHAFER | 14 | 22 | -- | -- |

* * * * *

1 P R O C E E D I N G S

2 (Whereupon, the Court Reporter was sworn by
3 the Court.)

4 THE COURT: All right. Which -- which case is
5 this?

6 MS. CORRIDON: It's the Jesse Morton case,
7 Your Honor.

8 THE COURT: Jesse Morton.

9 MR. HUNDLEY: Good afternoon, Your Honor.

10 THE COURT: Good afternoon.

11 THE DEFENDANT: Good afternoon.

12 THE COURT: Good afternoon. Are there any
13 preliminary matters before we begin?

14 MR. HUNDLEY: I'd ask for a rule on witnesses,
15 Your Honor.

16 THE COURT: All right.

17 MS. CORRIDON: The Commonwealth does have two
18 witnesses, Your Honor.

19 THE COURT: All right. Would the witnesses --
20 all to give testi -- all those to give testimony in this
21 matter please rise and raise your right hands?

22 POTENTIAL WITNESSES: (Complied with the
23 request.)

1 (Whereupon, the potential witnesses were duly
2 sworn by the Court.)

3 THE COURT: All right. Who's your first
4 witness?

5 MS. CORRIDON: It's going to be Jose Torres.

6 THE COURT: Mr. Torres, please come up to the
7 witness stand and have a seat. Officer, please step
8 outside.

9 OFFICER SHAFER: Yes, sir.

10 THE COURT: And do not discuss your testimony
11 with anyone until after I've rendered a decision in the
12 case -- except the lawyers, of course.

13 (Whereupon, Officer Shafer departed the
14 courtroom, as requested.)

15 THE COURT SECURITY OFFICER: Have a seat in
16 that chair.

17 MR. TORRES: (Complied with the request.)
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1 Whereupon,

2 JOSE TORRES

3 a witness, was called for examination by counsel on behalf
4 of the Commonwealth, and, after previously having been
5 duly sworn by the Court, was examined, and testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MS. CORRIDON:

9 Q Could you please introduce yourself to the
10 Court?

11 A My name is Jose Torres.

12 Q Okay.

13 Mr. Torres, on December 19th of 2017, were you
14 at Springfield Town Center?

15 A Yes.

16 Q On that date did you have occasion to purchase
17 a bracelet from Pandora?

18 A Yes.

19 Q Do you recall how much you paid for that
20 bracelet from Pandora?

21 A Anywhere between two-seventy and two-ninety I
22 vaguely remember.

23 MR. HUNDLEY: Judge, I -- I'm going to object

1 if he can't state the true value -- what he paid.

2 THE COURT: You can cross examine him, Mr.
3 Hundley.

4 BY MS. CORRIDON:

5 Q The bracelet was over \$200?

6 A Yes.

7 Q Okay.

8 After you purchased this bracelet what did you
9 do next?

10 A My siblings and I went downstairs. There was
11 a playpen there. And we were having a conversation. I
12 misplaced the bag. I put the bag down. And -- I was
13 careless so I thought I grabbed the bag and took it with
14 me but I had left it behind.

15 And then once I had left I then noticed that I
16 didn't have the bag with me. I went to go see if I can
17 retrieve it and it was no longer there. Well, the bag
18 itself was found in the cubbies where they place the
19 shoes.

20 THE COURT: I'm sorry, sir. I didn't -- I
21 missed that last part. You said the bag was there --

22 THE WITNESS: The bag itself -- the Pandora
23 bag itself -- was there but there was nothing in the bag.

1 It was -- I found it in the cubbies.

2 BY MS. CORRIDON:

3 Q What was originally in the bag --

4 A There --

5 Q -- that you are describing?

6 A -- there -- there -- there was a box --

7 Q And what --

8 A -- in there.

9 Q And what was in that box?

10 A The -- the bracelet.

11 Q The bracelet that you had purchased.

12 Did you report this to anyone?

13 A I went to -- oh, what was it called? The --
14 the Help Center Desk. It's not that far from the like
15 playpen.

16 And I asked if -- if someone could look into
17 that -- security -- mall security. And I was told to
18 contact Fairfax County.

19 Q Did you contact Fairfax County Police?

20 A I did.

21 MS. CORRIDON: Your Honor, I have no further
22 questions for this witness.

23 THE COURT: Cross examine?

CROSS EXAMINATION

BY MR. HUNDLEY:

Q You said you bought this bracelet from a Pandora store?

A Yes, sir. It's located upstairs --

Q Okay.

A -- from the playpen. It's like -- it's literally like right upstairs (indicating).

Q And you can't recall exactly how much you paid for the bracelet but you know it was definitely over \$200?

A Yes, sir.

Q How did you pay for it?

A With my debit card.

Q And when you left the Pandora store where was the bracelet?

A With me.

Q Was it in a box?

A It was in a bag.

Q And what was in the bag?

A The box.

Q Okay.

And what was in the box?

A The bracelet.

1 Q The bracelet, okay.

2 And what did the bag look like?

3 A It's like a small bag.

4 Q Okay.

5 Did it have any --

6 A It had a ribbon on the top of it -- a pink
7 ribbon.

8 Q Uh-huh.

9 Did it have any markings on it?

10 A The Pandora -- like the little --

11 Q All right.

12 A -- like (indiscernible).

13 Q Was the receipt for the bracelet in the bag?

14 A I -- I had it --

15 Q You had the receipt?

16 A I had the receipt.

17 Q And the bag itself had no identification
18 identifying --

19 A Right.

20 Q -- you as the owner; is that true?

21 A That's true. There were --

22 Q Right.

23 A -- there -- there wasn't --

1 Q Nor the box, nor the bracelet?

2 A No, sir.

3 Q So anybody finding that bag would have no way
4 of knowing it was your bracelet, right?

5 A (Nodding.)

6 Q Okay.

7 You said you went -- you took the bag
8 downstairs with you to the play area, correct?

9 A Yeah. Well, I was near the play area. I was
10 like by the -- by the cubbies --

11 Q Okay.

12 A -- by -- while my niece and nephew were
13 playing.

14 Q And you said you put the bag down.

15 Do you know where you put the bag down?

16 A Right next to me.

17 Q But where was that?

18 A I -- I placed it --

19 Q Where physic -- on the ground?

20 A Yes, sir, on the ground.

21 Q Okay.

22 A Like I stated, that was my fault. I did -- I
23 was careless. I placed the bag down and --

1 Q Okay.

2 A -- thought I had retrieved it.

3 Q And then how long was the bag on the ground?

4 A I was there for about an hour or so so --

5 Q And were you --

6 A -- it was right next to -- it was right next
7 to me the (inaudible).

8 Q The whole time the bag was right next to you
9 while you were at the play area for an hour?

10 A Well, I -- I was near the play area. I was by
11 the cubbies.

12 Q Okay.

13 But was the bag with you --

14 A Yeah --

15 Q -- that entire time?

16 A -- yes, sir. It was always next to me, yes,
17 sir.

18 Q And I take it you left the play area with your
19 niece and nephew and left the bag behind?

20 A Left the bag behind. I didn't --

21 Q How long -- how long was --

22 A -- didn't notice that.

23 Q -- how long was the bag out of your possession

1 before you realized it was gone?

2 A Twenty, thirty minutes.

3 Q And at that point after that 20 or 30 minutes
4 that's when you went to the Help Desk?

5 A That's when I went back to go make sure the --
6 whether like before I went to go to the Help Desk to see
7 if it was still there.

8 Q Okay.

9 A And I thought I had found it because I saw the
10 bag itself. I said, "Oh, well, that's my luck. Nice."

11 Q Okay.

12 And --

13 A "I can just grab this and go about my way."

14 Q Had that bag been moved from where you had
15 left it?

16 A Yeah.

17 Q Okay.

18 A It was in a cubby. It was (inaudible).

19 Q So how far had the bag been moved; do you
20 know?

21 A Maybe just a few feet.

22 Q Was it on the ground in front of the cubbies?

23 A It was on the ground.

1 Q It had been on the ground in front of the
2 cubbies?

3 A On the ground, yes.

4 Q Okay.

5 And you never saw anyone but yourself touch
6 that bag or go into that bag or remove anything from that
7 bag, right?

8 A I mean, I showed it to my siblings.

9 Q Okay.

10 But you have no idea how that bag became empty
11 after you walked away?

12 A No, sir.

13 MR. HUNDLEY: No further questions, Your
14 Honor.

15 THE COURT: Any redirect, Ms. Corridon?

16 MS. CORRIDON: No, Your Honor.

17 THE COURT: All right. You may step down. Is
18 he subject to recall?

19 MS. CORRIDON: No, Your Honor.

20 THE COURT: All right. You may stay or leave
21 as you please. Just don't discuss your testimony with
22 anyone --

23 THE WITNESS: Yes.

1 THE COURT: -- until after I've rendered the
2 decision in the case.

3 (Witness stood down.)

4 THE COURT: Call your next witness please, Ms.
5 Corridon.

6 MS. CORRIDON: Officer Shafer.

7 THE COURT: Officer Shafer.

8 Whereupon,

9 OFFICER SCOTT D. SHAFER
10 a witness, was called for examination by counsel on behalf
11 of the Commonwealth, and, after having previously been
12 duly sworn by the Court, was examined, and testified as
13 follows:

14 THE COURT: Officer, please come up and have a
15 seat on the witness stand. You are under oath. Answer
16 questions put to you by the attorneys.

17 THE WITNESS: Yes, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. CORRIDON:

20 Q Could you please introduce yourself to the
21 Court?

22 A Sure. Scott Shafer, police officer with
23 Fairfax County Police Department.

1 Q How long have you been employed in that
2 capacity?

3 A More than 11 years.

4 Q And were you so employed on duty in uniform
5 and displaying your badge of authority on December 20th of
6 last year?

7 A Yes, I was.

8 Q On that date did you have an occasion to
9 investigate a larceny complaint from the Springfield Town
10 Center?

11 A Yes, I did.

12 Q Okay.

13 Who reported that to you?

14 A Mr. Jose Torres.

15 Q Okay.

16 What, if anything, did you do during the
17 course of your investigation?

18 A Mr. Torres had reported to me that he had set
19 down a bracelet.

20 MR. HUNDLEY: Objection to hearsay, Your
21 Honor.

22 THE COURT: He's already testified to that.
23 He's just repeating what he did and what he would do in

1 response to it so I'll overrule the objection. Go ahead.

2 THE WITNESS: He'd been near the play area in
3 the Springfield Town Center which is located at the lower
4 level right below the Pandora store.

5 He stated he had left a bag. I think it was
6 on the little cubbies where kids might leave their shoes
7 or other things when they went and played.

8 He walked away with it accidentally after
9 having said goodbye to his family.

10 Then he proceeded to leave it there and sat
11 there for approximately an hour and a half, hour and
12 forty-five minutes during which time there was actually a
13 couple that had been laying down on the ground near the
14 cubby areas and had witnessed it.

15 MR. HUNDLEY: I'll object to the foundation,
16 Your Honor.

17 THE COURT: Sustained.

18 BY MS. CORRIDON:

19 Q Officer, what, if anything, did you use to
20 conduct your investigation?

21 A Sure. I conducted a -- went and met with mall
22 security. They have a video surveillance system that has
23 a video camera that is actually directed directly at the

1 cubbies where the bag had been -- been set down.

2 So upon reviewing the video I was able to see

3 --

4 MR. HUNDLEY: Your Honor, I'm going to object
5 to the officer's review of what's on the video -- a lack
6 of foundation, hearsay. If there's a video we should see
7 the video.

8 THE COURT: Well, the -- as to hearsay, I'm
9 not sure about that, but I do think you have to lay a
10 foundation, Ms. Corridon.

11 MS. CORRIDON: Okay.

12 BY MS. CORRIDON:

13 Q Officer, does the Springfield Town Center have
14 cameras?

15 A Yes, it does.

16 Q Where are they located?

17 A Throughout the -- I think they have more than
18 a hundred cameras throughout the mall, parking garages,
19 parking lots, outside areas, inside areas, hallways.

20 Q Are you familiar with how these cameras work?

21 A Yes.

22 Q How do they work?

23 A They are -- they are closed circuit where they

1 record independently onto a computer system that's within
2 their secure facility within -- inside the mall.

3 Q And closed circuit -- what do you mean by
4 that?

5 A That means that there is no access from inside
6 or -- outside of the system. So the system is self-
7 contained within a computer system inside -- so there's
8 not outside access from like the internet.

9 Q Does anyone have the ability to tamper with
10 this system?

11 A Not to my knowledge, no.

12 Q Okay.

13 And is this system recording in real time?
14 Are you familiar with how it's recording?

15 A It records in real -- in real time. What it
16 is is actually it's a motion and heat sensitive system.
17 So cameras will not record unless there is motion that is
18 -- that is surrounding that particular camera.

19 Q And was this camera to the best of your
20 knowledge on and working on December 19th?

21 A Yes.

22 Q Okay.

23 And did you have occasion to view this

1 footage?

2 A Yes, I did.

3 Q On what date did you review the footage?

4 A I reviewed it on the 20th and 21st of
5 December.

6 Q And where did you review this footage?

7 A In the security office at Springfield Town
8 Center.

9 Q Okay.

10 Had it been altered with or tampered in any
11 way?

12 A Not to my knowledge.

13 Q Okay.

14 And what did you observe on the video?

15 A The -- I observed the --

16 MR. HUNDLEY: Your Honor, again, I'm going to
17 object to him testifying to what he sees on the video. If
18 there's a video we should see the video.

19 THE COURT: Well, I'm not sure -- I don't
20 think so, Mr. Hundley. You can certainly ask for -- I
21 imagine they will provide you with a copy of it if they --

22 MS. CORRIDON: Your Honor, it has been
23 provided.

1 THE COURT: All right. But, no, I don't --

2 MR. HUNDLEY: Well, I'm objecting to the
3 foundation for that nature and purpose --

4 THE COURT: He can testify to what -- he can
5 testify to what he saw just as he could testify to what he
6 saw in any particular -- he's -- he's established the
7 basis for that. Go ahead.

8 THE WITNESS: So upon reviewing the video, the
9 bag had been set on top of the cubbies in between a kind
10 of a carpeted area and a play area.

11 And that -- for a period of time there was a
12 couple -- a man and a woman -- that had been in that area,
13 from what I believe, may have been using the internet --
14 the WiFi.

15 So -- the gentleman had been on a computer for
16 most of the time, probably a little over an hour's time.

17 At one point the woman then stands up,
18 actually picks up the bag and draws it to the attention of
19 the man that's down below, then gives that -- set the bag
20 down onto the cubby.

21 A few minutes pass by. The gentleman then
22 goes back and picks up the bag and takes out the contents
23 of the bag, places the contents into the pocket of his

1 jacket and then proceeds to exit the mall out to a parking
2 garage and then drives away.

3 BY MS. CORRIDON:

4 Q Okay.

5 Were you able to observe this individual's
6 face on the video?

7 A Yes, I was.

8 Q And the individual you are describing as the
9 man who picked up the contents of the bag, do you see him
10 in the courtroom today?

11 A I do. He's seated next to Counsel.

12 MR. HUNDLEY: Your Honor, I'm going to object
13 to identification. Again, if there's an identification
14 that's being made through a video we should see the video.
15 And the Court can look at the video and determine if, in
16 fact, it's the Defendant --

17 THE COURT: Ms. Corridon?

18 MR. HUNDLEY: -- that's on the video.

19 MS. CORRIDON: Your Honor, I think it goes to
20 what he reviewed on the video. He had personal knowledge
21 of it. He's compared what he's seen on the video to what
22 he sees in the courtroom today.

23 THE COURT: For purposes of today's hearing,

1 Mr. Hundley, I agree with her. I overrule the objection.

2 MS. CORRIDON: All right.

3 BY MS. CORRIDON:

4 Q Do you see the individual on the video in the
5 courtroom today?

6 A I do. He's seated next to Counsel.

7 MS. CORRIDON: Your Honor, I'd ask for
8 purposes of the recording, he identified the Defendant.

9 THE COURT: Thank you.

10 BY MS. CORRIDON:

11 Q Officer, is Springfield Town Center located
12 within the confines of Fairfax County?

13 A Yes, it is.

14 MS. CORRIDON: Your Honor, I have no further
15 questions for this witness.

16 THE COURT: Cross examine, Mr. Hundley?

17 CROSS EXAMINATION

18 BY MR. HUNDLEY:

19 Q When you first began looking at the video,
20 Officer, you saw a bag sitting on top of the cubbies where
21 shoes and -- are you -- used to store shoes and other
22 items for the play area for the children?

23 A The initial point where I started doing the

1 video was back when Mr. Torres had been holding his bag in
2 his possession and had set them down saying goodbye to
3 family. And then I reviewed it past that.

4 Q Okay.

5 And where did Mr. Torres set the bag down?

6 A He had set it down on the cubby.

7 Q On top of the cubby?

8 A Yes, sir.

9 Q So he didn't set it on the floor?

10 A I don't recall the exact things -- where it
11 had been. But it ended up at some point on top of the
12 cubby.

13 Q Okay.

14 And you -- but you don't have any idea how it
15 got on top of the cubby?

16 A I don't recall exactly.

17 Q You didn't see anybody on the video putting
18 the bag on top of the cubby, did you?

19 A I didn't take note of specifically how it got
20 there.

21 Q Okay.

22 And in reviewing the video could you determine
23 where that bag had come from?

1 A Initially, yeah. I had determined that it had
2 come from Mr. Torres. Like where -- oh, like what store
3 it had come from or where --

4 Q Yeah.

5 Could you tell on the video from the little
6 bag sitting on top of the cubby -- could you identify the
7 store it had come from?

8 A It was consistent with Pandora but, no, I
9 could not say specifically what store it had come from.

10 Q Okay.

11 And you didn't have any kind of cameras
12 looking inside of the bag, did you?

13 A No, sir.

14 Q Okay.

15 And so you couldn't see what was inside of the
16 bag at the time it was on top of the cubby?

17 A But I could see what he took out of the bag
18 after he had picked it up --

19 Q Okay.

20 A -- from the top of the cubby.

21 Q And what you say you saw is a box?

22 A It appeared to be a box, yes.

23 Q Okay.

1 But you have no idea what was in that box?

2 A No, sir.

3 Q Okay.

4 And it's your testimony that there was a woman
5 with Mr. Morton who actually picked up the bag the first
6 time and handed it to him?

7 A Yes, that's correct.

8 Q Okay.

9 Is there any video footage for that bag -- for
10 that -- for the -- is there any audio on the video?

11 A No, sir.

12 Q Okay.

13 So you had no idea what the woman said --

14 A No, sir.

15 Q -- to the man who put it in his -- to Mr.
16 Morton?

17 A No, sir.

18 Q Okay.

19 And you said you were then able to see them
20 leave the store and drive from the mall?

21 A They left separately so Mr. Morton left from
22 one direction and the woman left in another direction.
23 They eventually met up a number of minutes later inside

1 the vehicle in the parking garage outside of the mall.

2 Q All right.

3 And did you ever recover the bracelet?

4 A Yes.

5 Q Where was it recovered?

6 A At the Pandora store.

7 MR. HUNDLEY: Those are all the questions I'd
8 have --

9 THE COURT: All right.

10 MR. HUNDLEY: -- Your Honor.

11 THE COURT: Any redirect, Ms. Corridon?

12 MS. CORRIDON: No, Your Honor.

13 THE COURT: All right. You may step down,
14 Officer.

15 (Witness stood down.)

16 THE COURT: Does the Commonwealth have any
17 further witnesses?

18 MS. CORRIDON: That's the Commonwealth's
19 evidence, Your Honor.

20 THE COURT: All right.

21 MR. HUNDLEY: Your Honor, I'd ask the Court to
22 -- to dismiss the case. I don't believe that there's any
23 evidence that Mr. Morton took this bracelet with any

1 intent to deprive its owner of possession of it.

2 At best what we are dealing with here is lost
3 property.

4 Lost property can't be the subject of a
5 larceny unless the person finding it would know who the
6 owner was or had the means of learning who the owner is or
7 has reason to believe the owner may be discovered, and
8 then at that time takes the property -- the lost property
9 -- with the intent to convert it to themselves.

10 And that's *Hutchinson versus the Commonwealth*,
11 133 Va. 710. It's a 1922 case, Judge. It's a very old
12 case.

13 What we have here is the testimony of Mr.
14 Torres saying he left the bag on the ground for 20 or 30
15 minutes. Officer Shafer says it was left unattended for
16 perhaps an hour and a half after reviewing the video.

17 THE COURT: Uh-huh.

18 MR. HUNDLEY: When Officer Shafer first sees
19 it it's not on the floor. It's on top of the cubby.

20 THE COURT: Right.

21 MR. HUNDLEY: He sees purportedly Mr. Morton
22 being given the bag by a woman. He then puts the bracelet
23 or the box -- we don't know what's in the box at this

1 point because we don't know who's had access to the bag or
2 the box or the bracelet during the interim period -- put
3 it in his pocket and leave.

4 And yet the bracelet is inexplicably recovered
5 at Pandora.

6 THE COURT: Okay.

7 MR. HUNDLEY: So somehow it was returned to
8 Pandora.

9 THE COURT: All right.

10 MR. HUNDLEY: I don't believe there's evidence
11 of a theft here, Your Honor.

12 THE COURT: Thank you, Mr. Hundley. Ms.
13 Corridon, do you want to respond?

14 MS. CORRIDON: Your Honor, Mr. Torres'
15 testimony was that he paid over \$200 for the bracelet --

16 THE COURT: Value is not at issue.

17 MS. CORRIDON: -- which was placed in the box
18 in the bag. Officer Shafer testified that he sees the
19 Defendant go over, reach into the bag, remove the box.

20 THE COURT: But I have to take it from the
21 testimony of Mr. Torres who said he left it on the ground.
22 The video -- the testimony of the officer was that when he
23 saw it in the video it was on top of the -- on top of the

1 cubby.

2 And he doesn't recall how it -- there's no
3 explanation as to how it got there. Then we have the
4 sequence where it's -- the Defendant is seen to go -- meet
5 up with the female.

6 They have some kind of conversation and the
7 bag is put down. There's no indication of whether
8 anything was taken at that point. What hap -- and then
9 finally it ends up at the Pandora shop.

10 MS. CORRIDON: Your Honor, I submit the case
11 on the Commonwealth's evidence.

12 THE COURT: All right. I have to agree with
13 Mr. Hundley on this one. I'm going to order the charge
14 dismissed. The Commonwealth can take any steps it feels
15 necessary.

16 MS. CORRIDON: Thank you.

17 THE COURT: Thank you.

18 MR. HUNDLEY: Thank you, Your Honor.

19 * * * * *

20 (Whereupon, at approximately 3:15 o'clock
21 p.m., the hearing in the above-entitled matter was
22 concluded.)
23

CERTIFICATE OF REPORTER

I, GAIL HIRTE ZEHNER, a Verbatim Reporter, do hereby certify that I took the stenographic notes of the foregoing proceedings which I thereafter reduced to typewriting; that the foregoing is a true record of said proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were held; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

GAIL HIRTE ZEHNER
Verbatim Reporter